equity, whereas it may be argued that it is a legal right given by statute, and therefore not a right subject to the maxim of equity we have cited; and it might be said that, it being a conflict between two legal rights, therefore the maxim, "*qui prio est in tempore potior est in jure*," should govern; and, therefore, the lien-holder should have priority over all advances made by the mortgagees after the lien attached. We are, however, disposed to think the plaintiff's right was really equitable in that case, because he was seeking relief out of an equitable estate, and also claiming to cut down the legal debt created by the mortgage deed to a lesser sum on equitable grounds. But whether the judgment in that case be right or wrong, it is certainly unsatisfactory in that it ignores the 26th section, which has so important a bearing on the question involved.

The next case in which the matter was considered appears to be *Hynes* v. *Smith*, 8 P. R. 73, reported subsequently on the rehearing before the full court in 27 Gr. 150. It is equally unsatisfactory. That case originally came before Spragge, C. upon appeal from the master's ruling, refusing to add mortgagees as subsequent incumbrancers, but neither in the argument before him nor in his judgment, nor in that of Blake, V.-C. on the rehearing, is any reference whatever made to the 26th section. The only judge who considers the effect of that section is Proudfoot, V.-C., and he dissented from the opinion of Spragge, C. and Blake, V.-C. The case of *Hynes* v. *Smith* was this. The plaintiff commenced work before 31st December, 1877; two mortgages by the owner were afterwards registered, one on 31st May, 1878, the other 8th June, 1878; the plaintiff registered his lien on the 18th June, 1878. His lien having, as he claimed, attached prior to the registration of either of the mortgages, the usual decree having been obtained to enforce the lien, the plaintiffs applied to the master to add the mortgagees as parties in his office as subsequent incumbrancers. The master ruled that the mortgagees were not subsequent incumbrancers, and refused to add them. Spragge, C., on appeal, sustained this ruling, and upon the rehearing the full court was divided, Blake, V.-C. being in favour of affirming the order, and Proudfoot, V.-C., for reversing it. The order of Spragge, C. was therefore affirmed.

In the judgments of Spragge, C., and Blake, V.-C., we look in vain, as we have said, for any reference to sec. 26.

It may be remembered, that by the original Act of 1873, the lien only came into existence upon the claim being registered. The Act of 1874, however, made an important change in this respect, and gave the mechanic a lien "by virtue of being so employed, etc."; it repealed all acts inconsistent, and enacted that, except as therein otherwise provided, the Registry Act should not apply to any lien arising under the provisions of the Act.

When the statutes were revised, it, of course, became necessary in view of the the Act of 1874, to modify the provisions of the Act of 1873 respecting registration.

That Act had read "no lien under this Act shall exist unless and until" registration; but these words were of course omitted from the Revised Statutes.

Notwithstanding their omission Spragge, C., appeared to think the statute, at all events as to third parties, must still be construed as though they were still there. But here another very important section appears to have been overlooked, and that is section 2, which defines that the word "owner" shall extend to and include a person having any estate or interest, legal or equitable, in the lands upon or in respect of which the work is done, etc., at whose request and upon whose credit, or on whose behalf, or with whose privity